Supreme Court U.S.
FILED
SEP 16 2002
OFFICE OF THE CLERK

No. 02-107

In The

Supreme Court of the United States

ANN DANIEL and LEONARD HILL,

Petitioners,

v.

COUNTY OF SANTA BARBARA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

STEPHEN SHANE STARK, County Counsel*
ALAN L. SELTZER, Chief Deputy
WILLIAM M. DILLON, Senior Deputy
105 East Anapamu Street, Suite 201
Santa Barbara, California 93101
(805) 568-2950

Attorneys for the County of Santa Barbara

September 2002

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether a landowner may challenge a county's acceptance of an irrevocable offer of dedication as an unconstitutional taking in federal court, where the landowner did not first seek compensation under state law procedures and where, in any event, the landowner and his predecessor did not timely challenge the permit condition requiring the offer of dedication but instead voluntarily complied with the permit condition and accepted the benefits of the permit?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
INTRODUCTION	1
STATEMENT OF THE CASE	3
ARGUMENT	7
I. THE DANIELS' TAKINGS CLAIM DOES NOT MEET THE SECOND PRONG OF THE FEDERAL RIPENESS REQUIREMENT OF *WILLIAMSON COUNTY*	7
II. THE PETITION SHOULD BE DENIED BECAUSE IT IS BARRED BY THE STATUTE OF LIMITATIONS AND DOCTRINES OF RES JUDICATA AND WAIVER	9
A. The Claim Is Barred By the Statute of Limitations and Res Judicata	9
B. The Claim Is Barred By Waiver	11
III. THE DANIELS' MANUFACTURED TAKINGS CLAIM IS BASED ON A MISTAKEN VIEW OF CALIFORNIA REAL PROPERTY LAW	12
A. The Daniels' Taking Theory Does Not Present An Important Issue of Federal Law	12
B. The Daniels' Takings Claim Is Meritless	14
IV. THE DANIELS PRESENT NO IMPORTANT ISSUES OF RIPENESS	17
CONCLUSION	19

TABLE OF AUTHORITIES

Page

CASES

California Coastal Comm'n v. Superior Court ("Ham"), 210 Cal.App.3d 1488, 258 Cal.Rptr. 567 (Cal.App. 1989) ..... *passim*

City of Santee v. Superior Court, 228 Cal.App.3d 713, 279 Cal.Rptr. 22 (Cal.App. 1991) 11

County of Imperial v. McDougal, 19 Cal.3d 505, 564 P.2d 14, 138 Cal.Rptr. 472, (Cal.), *app. dismissed*, 434 U.S. 944 (1977) 11

County of San Diego v. Miller, 13 Cal.3d 684, 119 Cal.Rptr. 491, 532 P.2d 139 (1975) 17

Daniel v. County of Santa Barbara, 288 F.3d 375 (9th Cir. 2002) 4, 7

Dodd v. Hood River County, 59 F.3d 852 (9th Cir. 1995), *cert. denied*, 525 U.S. 923 (1998) 8

Dolan v. City of Tigard, 512 U.S. 374, 129 L. Ed. 2d 304, 114 S.Ct. 2309 (1994) 13

First English Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304 (1987) 5

Grupe v. California Coastal Comm'n 166 Cal.App.3d 148, 212 Cal.Rptr. 578 (Cal.App. 1985) 16

Hensler v. City of Glendale, 8 Cal.4th 1, 32 Cal.Rptr.2d 244, 876 P.2d 1043 (Cal. 1994) 9, 13, 17

Jama Construction v. City of Los Angeles, 938 F.2d 1045 (9th Cir. 1991), *cert. denied*, 503 U.S. 919 (1992) 8

Lai v. City & County of Honolulu, 841 F.2d 301 (9th Cir. 1988), *cert. denied*, 488 U.S. 994 (1988) 8

TABLE OF AUTHORITIES – Continued

Page

Leroy Land Development Co. v. Tahoe Regional Planning Agency, 939 F.3d 696 (9th Cir. 1991) ...2, 11, 13

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992).....16

Macri v. King County, 126 F.3d 1125 (9th Cir. 1997), *cert. denied*, 522 U.S. 1153 (1998)..... 8

Nollan v. California Coastal Commission, 483 U.S. 825 (1987).....6, 13, 14, 16

Ojavan Investors v. California Coastal Comm'n, 26 Cal.App.4th 516, 32 Cal.Rptr. 103 (Cal.App. 1994), *cert. denied*, 513 U.S. 1148 (1995).....2, 10, 11, 15

Palazzolo v. Rhode Island, 533 U.S. 606 (2001).....6, 18

Palo Alto Town & Country Village, Inc. v. BBTC Co., 11 Cal.3d 494, 113 Cal.Rptr. 705 (Cal. 1974) 15

Patrick Media Group, Inc. v. California Coastal Comm'n, 9 Cal.App.4th 592, 11 Cal.Rptr.2d 824 (Cal.App. 1992).....10, 13

Pfeiffer v. City of La Mesa, 69 Cal.App.3d 74, 137 Cal.Rptr. 804 (Cal.App. 1977).....11

Rossco Holdings, Inc. v. State of California, 212 Cal.App.3d 642, 260 Cal.Rptr. 736 (Cal.App. 1989), *cert. denied*, 494 U.S. 1080 (1990)..... 1, 10, 11, 13, 17

Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725, 117 S.Ct. 1659 (1997) 7

United States v. 30.54 Acres of Land, 90 F.3d 790 (3d Cir. 1996).....16

Warner Bros. Pictures v. Brodel, 31 Cal.2d 766, 192 P.2d 949 (Cal.), *cert. denied*, 335 U.S. 944 (1948).....15

TABLE OF AUTHORITIES – Continued

Page

Washington Legal Foundation v. Legal Foundation of Washington, 271 F.3d 835 (9th Cir. 2001) 8

Washington Legal Foundation v. Legal Foundation, 70 U.S.L.W 3751 (U.S. June 10, 2002) 8

Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985) .....*passim*

Wilson v. Garcia, 471 U.S. 261, 275, 105 S.Ct. 1938, 85 L. Ed. 2d 254 (1985) 9, 13

STATUTES

42 U.S.C. § 1983 9

Cal. Gov. Code § 66499.37 .....9, 10

INTRODUCTION

In this petition, the current owners of coastal property seek to avoid the legal obligation to provide public access that their predecessor in interest voluntarily assumed in 1974 when he obtained a coastal development permit for the approval of a subdivision. This legal obligation was affirmed in 1978 when the landowner accepted a second coastal development permit to construct a house on one of the subdivided lots and again in 1987 when the next landowner recorded a formal offer to dedicate the easement in compliance with the conditions of approval. The current landowners, Ann Daniel and Leonard Hill (the "Daniels"), request that the Court review the Ninth Circuit's decision rejecting their claim that Santa Barbara County's acceptance of the 1987 irrevocable offer of dedication constituted a "taking." The Daniels' petition presents no important federal questions and should be denied:

- The Daniels' federal court claim is not ripe under the second prong of this Court's holding in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194 (1985), which requires a plaintiff seeking relief for an alleged taking to seek "compensation through the procedures the State has provided for doing so," before a claim may be pursued in federal court.

- The doctrines of res judicata and waiver bar a successor landowner from collaterally attacking permit conditions where the predecessor landowner did not challenge the permit condition but instead voluntarily complied with the permit condition and accepted the benefits of the permit. See, *e.g.*, *California Coastal Comm'n v. Superior Court ("Ham")*, 210 Cal.App.3d 1488, 258 Cal.Rptr. 567 (Cal.App. 1989); *Rossco Holdings,*

Inc. v. State of California, 212 Cal.App.3d 642, 260 Cal.Rptr. 736 (Cal.App. 1989), *cert. denied,* 494 U.S. 1080 (1990).

- There is no conflict among the courts, because both state and federal courts have found that a landowner may not collaterally attack an offer of dedication required as a permit condition after the statute of limitations has expired and where the landowner has obtained the benefits of the permit. *E.g., Ham; Leroy Land Development Co. v. Tahoe Regional Planning Agency*, 939 F.3d 696, 698-699 (9th Cir. 1991).

- Even putting aside that the Daniels' takings claim is barred by res judicata and waiver, their takings claim based on County's acceptance of the irrevocable offer is meritless because it is based on a misunderstanding of California law regarding property dedications. Once a landowner records an irrevocable offer of dedication, his ability to exclude the public terminates upon acceptance of the offer. The Daniels, as successors in interest, have no greater property rights than what their predecessors conveyed to them. See *Ojavan Investors v. California Coastal Comm'n*, 26 Cal.App.4th 516, 528, 32 Cal.Rptr. 103 (Cal.App. 1994), *cert. denied*, 513 U.S. 1148 (1995). Because the Daniels' predecessors had no right to object to the County's acceptance of the irrevocable offer of dedication, neither did the Daniels.

The Daniels' petition a for writ of certiorari should be denied.

STATEMENT OF THE CASE

The Daniels purchased beachfront property in Santa Barbara County in 1997. Pet. App. 2a. This property had once been part of a larger parcel owned by Carl Johnson, which he subdivided in 1974 into four separate parcels. *Id.* A regional commission of the California Coastal Commission approved the division conditioned on Johnson's recordation of a 25-year "firm continuing" irrevocable Offer to Dedicate to County a five-foot wide pedestrian and bicycle easement across the property. *Id.*

Johnson appealed the imposition of the condition to the California Coastal Commission ("Commission"), which affirmed the regional commission's decision. *Id.* Johnson did not seek judicial review of this administrative decision. *Id.* This condition was reimposed in 1977 when Johnson applied for and received a permit from the Commission to build a house on the parcel now owned by the Daniels. Pet. App. at 4a. Johnson did not challenge the condition and built the house in 1978. *Id.*

In 1987, W. Bruce and Darlene Bucklew ("the Bucklews"), who acquired the parcel from Johnson, were required by the Commission to record a 25-year "irrevocable" Offer to Dedicate for the same five-foot easement because Johnson had failed to comply with the 1977 permit condition requiring the offer of dedication. Pet. App. at 4a & 22a. The Bucklews did not challenge the Commission's request and proceeded to record the offer to dedicate. Pet. App. at 4a. All three offers were matters of public record. Pet. App. at 2a. In 1997, the Daniels acquired the property from the Bucklews. Pet. App. at 2a.

In 1998, and within the 25-year period, County accepted the Bucklews' offer to dedicate the easement. *Id.*

The Daniels challenged County's actions in federal district court, alleging a violation of the Takings Clause of the Federal Constitution. *Id.* The Daniels sought declaratory and injunctive relief only, declining to seek compensation. Pet. App. at 6a. Neither Johnson, the Bucklews, nor the Daniels ever sought compensation for an alleged taking in any state proceeding.

On County's motion, the district court dismissed the takings claim, holding that the Daniels lacked standing because their property was subject to the offer to dedicate at the time they purchased it. Pet. App. at 4a. Alternatively, the district court held that the takings claim accrued in 1974 and 1977, and in any event no later that 1987, and was therefore time-barred. *Id.* Further, the district court held that even if the Daniels had standing and their takings claim was not time-barred, the claim was not ripe because the Daniels could not allege that the state had refused to compensate them or their predecessors in interest for the alleged taking. Pet. App. at 5a. The district court also dismissed the Daniels' supplemental state law claims. *Id.*

The Daniels appealed the dismissal of their takings claim. In a reported decision, the Ninth Circuit affirmed the decision of the district court. *Daniel v. County of Santa Barbara*, 288 F.3d 375 (9th Cir. 2002). The Ninth Circuit determined the claim was not ripe under the second prong of this Court's holding in *Williamson County*, which requires a plaintiff seeking damages for an alleged taking to seek compensation first in state proceedings before seeking relief in the federal courts. Pet. App. at 7a. The Court stated:

> . . . the second *Williamson County* requirement does not appear to have been satisfied. Neither Johnson nor the Bucklews ever attempted to use state procedures to obtain just compensation from the Commission, which exacted the offers to dedicate, or from the County of Santa Barbara, to which the offers were made. Assuming that adequate state procedures were available to seek such compensation, the failure of Johnson and the Bucklews to seek just compensation meant that they never created ripe federal takings claims.

Pet. App. at 8a.[1]

Alternatively, the Ninth Circuit found that if there had been no adequate state compensation remedy available in California until 1987 when this Court decided *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987), then the claim was ripe as soon as the Commission's decision was final. Pet. App. at 8a, citing *Williamson County* 473 U.S. at 194-197. In such case, the Ninth Circuit concluded the claim was barred by the statute of limitations. Pet. App. at 9a.

In concluding the claims were barred by the statute of limitations, the Court determined that the imposition of the permit conditions requiring an irrevocable offer of

---

[1] The Ninth Circuit assumed the alleged taking was a "regulatory taking," (Pet. App. at 6a) but noted that even if the takings claim was a physical taking, it made no difference as to the application of the second requirement of *Williamson County* (Pet. App. at 9a). "In a physical takings case, as in a regulatory takings case, the property owner must have sought compensation for the alleged taking through available state proceedings." *Id.*

dedication was like the taking of an option and the taking of the options occurred in 1974, 1978, and 1987. Pet. App. at 11a. Because the County did not have to pay anything to exercise the option, the Ninth Circuit determined that "the value of what was taken from Johnson and the Bucklews was the full value of the easement." *Id.* Therefore, when the Daniels purchased the property from the Bucklews, the offer to dedicate had already been taken from the predecessor in interest and "County's acceptance of one of those offers took nothing from the Daniels that had not already been taken." *Id.*

Further, the Ninth Circuit found that the Daniels had "purchased their property with notice of the [conditions and recorded offer to dedicate]. They cannot by virtue of their purchase, obtain greater rights than those held by their predecessors in interest." Pet. App. at 10a. On these facts, the court held that this Court's decision in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), did not resurrect the Daniels' takings claim.

Finally, the Ninth Circuit ruled that even if the takings claim was ripe under *Williamson County*, the Daniels' remedy was to seek compensation rather than declaratory and injunctive relief. Pet. App. at 13a. The Ninth Circuit held that if there is a constitutional infirmity in this situation, it is in the state's failure to pay for the taking, because, as stated by this Court in *Nollan v. California Coastal Commission* 483 U.S. 825, 841, 842 (1987), "California is free to . . . [use] its power of eminent domain for the 'public purpose,' . . . but if it wants an easement across the Nollans' property, it must pay for it." Pet. App. at 14a, quoting *Nollan*.

ARGUMENT

I. THE DANIELS' TAKINGS CLAIM DOES NOT MEET THE SECOND PRONG OF THE FEDERAL RIPENESS REQUIREMENT OF *WILLIAMSON COUNTY*.

The Daniels' petition is meritless for a variety of independent reasons, and none present important federal questions or a conflict among the courts. The first reason is noncompliance with the requirements of *Williamson County*. In *Williamson County*, 473 U.S. at 186, this Court identified two separate ripeness hurdles that a plaintiff must satisfy prior to seeking relief for a takings claim in federal court: the final decision requirement and the state compensation requirement. As reiterated in by this Court in *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 117 S.Ct. 1659 (1997):

> *Williamson County* . . . explained that a plaintiff must demonstrate that she has both received a 'final decision regarding the application of the [challenged] regulations to the property at issue' from 'the government entity charged with implementing the regulations,' *id.*, at 186, 105 S.Ct., at 3116, and sought 'compensation through the procedures the State has provided for doing so,' *id.*, at 194, 105 S.Ct., at 3120.

Id. at 734, 117 S.Ct. at 1665.

The state compensation requirement means that takings claims against local and state governments must begin in state courts. Indeed, before it issued its decision in *Daniels v. County*, the Ninth Circuit has routinely and uniformly applied *Williamson County* to dismiss federal takings claims where the plaintiff did not first seek compensation through available state court procedures. See,

e.g., *Macri v. King County*, 126 F.3d 1125, 1130 (9th Cir. 1997), *cert. denied*, 522 U.S. 1153 (1998) (dismissing takings claim for failure to first seek relief in state court); *Jama Construction v. City of Los Angeles*, 938 F.2d 1045, 1047-48 (9th Cir. 1991), *cert. denied*, 503 U.S. 919 (1992) (dismissing claim because "Jama did not seek compensation through California procedures before bringing its federal action."); *Lai v. City & County of Honolulu*, 841 F.2d 301, 303 (9th Cir. 1988), *cert. denied*, 488 U.S. 994 (1988) (dismissing claim because plaintiffs failed to "pursue all avenues of relief before presenting a takings claim in federal court"). Moreover, this requirement has been uniformly applied by the Circuit Courts. See *Dodd v. Hood River County*, 59 F.3d 852, 859 n.3 (9th Cir. 1995), *cert. denied*, 525 U.S. 923 (1998) (citing cases from the First, Second, Sixth, Seventh, Tenth and Eleventh Circuits).[2]

Therefore, under the second prong of *Williamson County*, the petition should be denied.

---

[2] Petitioners suggest that this issue is being reviewed by this Court in *Washington Legal Foundation v. Legal Foundation*, 70 U.S.L.W 3751 (U.S. June 10, 2002) (No. 21-1325). The issues raised in that case, however, are far different from the land use context, as that review focuses on the Ninth Circuit's holding in *Washington Legal Foundation v. Legal Foundation of Washington*, 271 F.3d 835 (9th Cir. 2001), which rejected a challenge that the Washington State Interest on Lawyers' Trust Account ("IOLTA") program unconstitutionally took the interest generated by their monies placed in IOLTA trust accounts.

II. THE PETITION SHOULD BE DENIED BECAUSE IT IS BARRED BY THE STATUTE OF LIMITATIONS AND DOCTRINES OF RES JUDICATA AND WAIVER.

Even if the second prong of *Williamson County* did not prevent the Daniels from bringing this claim in federal court, the Daniels' challenge to the offer of dedication required by the Coastal Commission was barred many years ago.

A. The Claim Is Barred By the Statute of Limitations and Res Judicata.

As an alternative to its holding that the Daniels' claim is not ripe, the Ninth Circuit determined that the claim was barred by the "applicable" statute of limitations. Pet. App. at 9a. For takings claims under 42 U.S.C. section 1983, the applicable statute of limitations is the state statute of limitations. *Wilson v. Garcia*, 471 U.S. 261, 275, 105 S.Ct. 1938, 1946-1947, 85 L. Ed. 2d 254, 266 (1985). Although the Ninth Circuit did not specify which statute of limitations it had applied, the district court held that in California the claim was barred either by the three-year (for claims prior to 1985) or one-year (for post 1985 claims) statute of limitations. Pet. App. at 42a. The district court further noted that any claim in state court for compensation must be filed within 90 days of the date of the final adjudicatory administrative decision. *Id.* n. 42, citing *Hensler v. City of Glendale*, 8 Cal.4th 1, 22, 32 Cal.Rptr.2d 244, 876 P.2d 1043, 1047 (Cal. 1994) and Cal. Gov. Code

§ 66499.37.[3] Regardless of which statute of limitations applied, it is clear that the time to file a claim challenging the exaction of an offer of dedication that first occurred in 1974 expired long before the Daniels acquired the property in 1997.

If a landowner fails to file a timely challenge, the Coastal Commission's subdivision approval or permit decision becomes final, and the application of state law principles of res judicata and collateral estoppel renders the Commission's decision "immune from collateral attack, either by inverse condemnation action or by any other action." *Patrick Media Group, Inc. v. California Coastal Comm'n,* 9 Cal.App.4th 592, 608, 11 Cal.Rptr.2d 824, 833 (Cal.App. 1992).

Applying this rule, the California courts repeatedly have rejected collateral attacks on permit conditions, including public access conditions, where the time for properly challenging the Commission's decision has long since passed. See *Ham,* 210 Cal.App.3d 1488, 258 Cal.Rptr. 567 (Cal.App. 1989) (rejecting collateral attack on access condition where landowner failed to file timely challenge, complied with condition and accepted benefits of permit); *Rossco Holdings,* 212 Cal.App.3d 642, 260 Cal.Rptr. 736 (Cal.App. 1989), *cert. denied,* 494 U.S. 1080 (1990) (barring collateral attack on access conditions where applicant failed to timely file a challenge to conditions); *Ojavan Investors,* 26 Cal.App.4th 516, 32 Cal.Rptr.

---

[3] County has consistently argued in this case that the 90-day statute of limitation of Cal. Gov. Code § 66499.37 applies. See, *e.g.*, ER 0049.

103 (Cal.App. 1994), *cert. denied,* 513 U.S. 1148 (1995) (failure to timely challenge permit conditions renders them immune from collateral attack by successor in interest).

In this case, the original landowner, Johnson, never filed an action challenging the either the Coastal Commission's 1974 approval of the subdivision or the 1977 building permit. Nor did the Bucklews challenge the 1987 requirement that they record the irrevocable offer to dedicate. As a result, under uniform principles in both the federal and state courts, the statute of limitations and doctrine of res judicata bar the Daniels' claim. *Ham; Rossco Holdings*; *see Leroy Land Development Co.* at 698-699.

B. The Claim Is Barred By Waiver.

The Daniels' collateral attack on the permit conditions is also barred under California's waiver doctrine. Under this doctrine, a challenge to a permit condition by a landowner or his successor in interest is waived when the landowner complies with the permit condition or accepts the benefits of the permit. *County of Imperial v. McDougal,* 19 Cal.3d 505, 510-12, 564 P.2d 14, 17-18, 138 Cal.Rptr. 472, 474-75 (Cal.), *app. dismissed*, 434 U.S. 944 (1977). California courts frequently have applied this rule against collateral attacks on permit conditions. *Rossco Holdings,* 212 Cal.App.3d at 654, 260 Cal.Rptr. at 742 (waiving challenge to access condition by receiving benefits of permits and by complying with condition); *see Ojavan Investors, Inc.,* 26 Cal.App.4th at 527-28, 32 Cal.Rptr.2d at 110, *City of Santee v. Superior Court*, 228 Cal.App.3d 713, 279 Cal.Rptr. 22 (Cal.App. 1991); *Pfeiffer*

v. City of La Mesa, 69 Cal.App.3d 74, 137 Cal.Rptr. 804 (Cal.App. 1977).

Applying this state law rule, the permit "runs with the land" and the Daniels succeeded to the benefits of the permit issued to Johnson. The Daniels cannot now challenge the condition placed on issuance of that permit. Consequently, the Daniels' petition should be denied.

III. THE DANIELS' MANUFACTURED TAKINGS CLAIM IS BASED ON A MISTAKEN VIEW OF CALIFORNIA REAL PROPERTY LAW.

Even if the Daniels could avoid *Williamson County's* second prong and were allowed to bypass the statute of limitations and the doctrines of res judicata and waiver, their takings claim would not present an important issue of federal law.

A. The Daniels' Taking Theory Does Not Present An Important Issue of Federal Law.

Implicitly realizing the untimeliness of their action, the Daniels seek to manufacture a takings claim by their dual taking theory – that the imposition of a permit condition requiring an offer of dedication constitutes one taking and that County's 1998 acceptance of the irrevocable offer of dedication is a second, legally distinct taking. Pet. at 17. The Daniels, however, do not point to any reported decision, treatise, law review article or other legal source that supports this peculiar theory.

Inventing a new legal theory does not make it an important new issue of federal law. Nor do the Daniels elevate this issue in importance by pointing to "literally

hundreds of other offers . . . are soon to expire." Pet. at 18. Even if these offers ever get accepted, the Daniels are presumptuous in assuming that other landowners also will seek to renege on legal obligations that they voluntarily undertook.[4]

The Daniels also argue that the Court should grant the petition because landowners have "little incentive" to contest the initial offer of dedication, thereby encouraging governments to use the offer of dedication "scheme" to circumvent the requirements of *Nollan*. Pet. at 19. This assertion is incredible. Cases such as *Hensler*, *Ham*, *Rossco*, and *Patrick Media* for years have provided landowners notice that they are legally required to bring a challenge to a permit condition when the condition is first imposed, and cases such as *Nollan* and *Dolan v. City of Tigard*, 512 U.S. 374, 129 L. Ed. 2d 304, 114 S.Ct. 2309 (1994) give the permittee every incentive to challenge the imposition of the original permit condition if government oversteps its authority. Notwithstanding the Daniels' empty claims of "coercion" and "extortion," there is no reason to create a new constitutional rule that would allow landowners to challenge the acceptance of irrevocable offers of dedication many years after they have accepted permit conditions and enjoyed the benefits of the permit. See *Leroy Land Development Co.*, 939 F.3d at 698-699 (challenge to settlement agreement imposing conditions of development five years after execution, based on a subsequent takings

[4] Indeed, the Daniels completely overstate the issue. In Santa Barbara County, of the 72 outstanding offers to dedicate accepted by County, see Cole Pet. at 4, only two landowners (Cole and Daniel) have chosen to challenge County's acceptance.

analysis articulated in *Nollan*, rejected because it " . . . would inject needless uncertainty and an utter lack of finality to settlement agreements of this kind").

B. The Daniels' Takings Claim Is Meritless

In any event, the Daniels' underlying takings claim is meritless, even putting aside that it is barred by res judicata and waiver. The Daniels' claim that County's acceptance of an irrevocable offer of dedication constitutes a separate compensable taking is founded on a mistaken understanding of the property "right" retained by a landowner after the landowner has recorded an irrevocable offer of dedication. As the Daniels properly concede, state real property law must measure the property interest claimed to be taken. Pet. at 10. In the Daniels' view of California law, the public does not "acquire any right to the easement" until the offer is accepted. Pet. at 11-12.

The Daniels' theory that County's acceptance of an irrevocable offer of dedication is a separate taking is based on a misreading of California real property law. Once the landowner records an irrevocable offer of dedication, he has conveyed away the right to exclude the public should the irrevocable offer ever be accepted and opened to the public. In this case, for example, the irrevocable offer granted by the Daniels' predecessor states that:

> . . . offer[ing] for dedication to the County of Santa Barbara or its successor in jurisdiction, for recreational pedestrian and bicycle access an easement 5' in width from Padaro Lane to the mean high tide line. . . . Said offer shall be a *firm continuing offer of dedication* which is not rejected or vitiated by failure to accept or purported rejection for a period of 25 years, unless

> the County has in the meantime provided beach access within a distance of 300 yards upcoast or downcoast of this parcel. The offer of dedication shall be conditioned on assumption by the County of Santa Barbara or its successor, of the burden of maintenance of the easement and the beach area to which access is provided, together with the burden of public liability on the easement.

Pet. App. at 2a. (Emphasis by Ninth Circuit.)

Therefore, although the landowner may have the qualified right to exclude others while the irrevocable offer of dedication is outstanding, that right is subject to immediate extinction once the agency accepts the offer. A public agency's acceptance of the irrevocable offer of dedication is not a taking of a landowner's property right; it is the public's exercise of a right that the landowner explicitly conveyed away when he made the irrevocable offer of dedication. *See, e.g., Ojavan Investors,* 26 Cal.App.4th at 528, 32 Cal.Rptr. at 110 (finding that prior landowner had waived right to challenge deed restrictions by having accepted the benefits of the permit and that current landowner can take "only the title [the prior owner] had and subject to prior recorded instruments").

As recognized by the Ninth Circuit, under both federal and California law, an irrevocable offer of dedication is like an option, and the taking of an option occurs when the option is granted, not when it is exercised. Pet. App. at 10a; *and see Palo Alto Town & Country Village, Inc. v. BBTC Co.,* 11 Cal.3d 494, 502, 521 P.2d 1097, 1102, 113 Cal.Rptr. 705 (Cal. 1974) (the making of an option is an "irrevocable offer"); *Warner Bros. Pictures v. Brodel,* 31 Cal.2d 766, 772, 773, 192 P.2d 949, 952 (Cal.), *cert. denied,*

335 U.S. 944 (1948) (an "option contract gives the optionee a right against the optionor for performance of the contract . . . which the optionor cannot defeat by repudiating the option"). Thus, when County accepted the irrevocable offer, County's action took nothing from the Daniels "that had not already been taken." Pet. App. at 11a. The California authority upon which the Daniels rely concerns revocable offers of dedication, not irrevocable offers, Pet. at 11-12, and simply highlights that the Daniels' takings claim is entirely dependent on having this Court reach a different conclusion about the California law of property dedication.[5]

Finally, the determination that the acceptance of an irrevocable offer is not a taking accords with this Court's views in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). In *Lucas*, decided five years after *Nollan*, this Court acknowledged that "we assuredly would permit the government to assert a permanent easement that was a pre-existing limitation upon the landowner's title." *Lucas*, 505 U.S. at 1028-29; and see *United States v. 30.54 Acres of Land*, 90 F.3d 790, 792 (3d Cir. 1996) ("Because the navigational servitude was a preexisting limitation on the landowners' title to riparian land, we hold the Corps'

---

[5] The Daniels also rely on *Grupe v. California Coastal Comm'n*, 166 Cal.App.3d 148, 212 Cal.Rptr. 578 (Cal.App. 1985) to support their dual taking theory. Pet. at 11. In *Grupe*, the court upheld the Commission's imposition of a condition requiring the developer to make an offer of dedication to mitigate the impacts of his project. The court recognized the contingent nature of the residual "rights" of the landowner and that the landowner's ability to exclude existed only "*until such time as a public agency or private association agrees to accept the offer and concomitant responsibility to police the beach.*" *Grupe*, 166 Cal.App.3d at 170, 212 Cal.Rptr. at 592 (emphasis added).

exercise of the servitude . . . was not a taking[.]").Under California real property law, the recording of an irrevocable offer of dedication is a preexisting limitation on title that extinguishes any right to exclude the public once the irrevocable offer is accepted.

IV. THE DANIELS PRESENT NO IMPORTANT ISSUES OF RIPENESS.

The Daniels concurrent assertion that their takings claim was not ripe until County accepted the offer, Pet. at 15, fails for the same reason that it fails on the merits. Again, the Daniels' argument ignores that California law requires that any challenges to subdivision approvals and permit conditions, including constitutional challenges, must be brought within the time period for challenging the underlying administrative action. *See Hensler,* 8 Cal.4th at 22, 32 Cal.Rptr. at 257-258, *Ham,* 210 Cal.App.3d at 1493, 258 Cal.Rptr. at 568; *Rossco Holdings,* 212 Cal.App.3d at 657, 260 Cal.Rptr. at 744. Consequently, if there was a takings claim, it became ripe many years ago when the Commission imposed the permit condition exacting the offer of dedication.

Moreover, the acceptance of an irrevocable offer of dedication can never arise to a taking because, as discussed, once a landowner records an irrevocable offer of dedication, he irrevocably conveys any right to exclude the public if the offer of dedication is accepted. When County accepted the Bucklews' original offer of dedication, it simply exercised the property interest that the Daniels' predecessor had irrevocably conveyed to the public, and that the Daniels had no property interest to prevent. *County of San Diego v. Miller*, 13 Cal.3d 684, 693, 119 Cal.Rptr. 491, 532

P.2d 139 (1975) ("owner of an unexercised option to purchase land possesses a property right . . . "). Because a takings claim based on the acceptance of such an offer does not exist, it is pointless to consider when such a claim might "ripen."

The Daniels also appear to suggest that their ability to attack the subdivision map and permit conditions was somehow resurrected by this Court's holding in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001). *Palazzolo* indicated that a transfer of title does not necessarily bar a takings claim, even though the new owner acquires the property with knowledge of existing regulation. *Palazzolo,* however, did not eliminate the statute of limitations for takings claims, nor did it allow a subsequent landowner to assert a takings claim that the predecessor had already lost before the transfer. As the Ninth Circuit correctly held in this case, the Daniels' predecessor did not file a takings claim before the limitations period expired, but instead complied with the restriction and accepted the benefits of the permit. Therefore, the Daniels "purchased their property subject to the County's pre-existing options to accept dedication of an easement. . . . Because the full value of the easement had already been taken from the Daniels' predecessor, it took nothing of value from the Daniels." Pet. App. 13a. *Palazzolo* did not revive takings claims that had expired long before the new owner acquired the property.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

STEPHEN SHANE STARK, County Counsel*
ALAN L. SELTZER, Chief Deputy
WILLIAM M. DILLON, Senior Deputy
105 East Anapamu Street, Suite 201
Santa Barbara, California 93101
(805) 568-2950

Attorneys for the County of Santa Barbara

September 2002 **Counsel of Record*